

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JOHN GUNARTT

Appellant,

vs.

FIFTH THIRD BANK,

Appellee,

Case No. 06-cv-00273

NOTICE OF MOTION

TO: *See Attached Service List*

On February 23, 2006, at 9:30 a.m. or as soon as thereafter, as counsel may be heard, I shall appear before the Honorable Judge Matthew F. Kennelly in Courtroom 2103 or any judge sitting in his stead, in the courtroom usually occupied by him at the United States District Court, Northern District of Illinois, 219 South Dearborn Street, Chicago, IL 60604 and then and there move the Court to strike the allegations/facts as set forth in the Leave to Appeal filed by the Pro Se Appellant, John Gunartt, on January 3, 2006 and the Statement of Issues on Appeal filed by the Pro Se Appellant, John Gunartt, on February 9, 2006, as supported by the motion is attached hereto.

FIFTH THIRD BANK

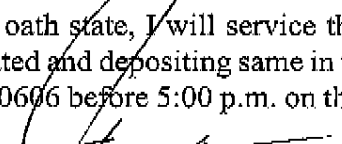
By: 

Jerold J. Shapiro, Its Attorney

Kamm & Shapiro, Ltd.
318 West Adams Street-Suite 1700
Chicago, Illinois 60606
Attorney No. 21917
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PROOF OF SERVICE

I, Jerold J. Shapiro, the undersigned attorney, on oath state, I will service this Notice by mailing a copy to persons named above at the addresses stated and depositing same in the U.S. Mail at 318 West Adams Street, Suite 1700, Chicago, Illinois 60606 before 5:00 p.m. on the 16th day of February, 2006 with proper postage prepaid.



SERVICE LIST

JOHN GUNARTT
414 South Scoville
Oak Park, Illinois 60304

United States Trustee
Office of the United States Trustee
227 West Monroe Street
Suite 3350
Chicago, Illinois 60606

Norman Newman
Much, Shelist, Freed, Denenburg, Ament & Rubenstein
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606

William S. Hackney
Much, Shelist, Freed, Denenburg, Ament & Rubenstein
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JOHN GUNARTT

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Case No. 06-cv-00273

Appellant,

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vs.

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FIFTH THIRD BANK,

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Appellee,

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**MOTION TO STRIKE THE ALLEGED FACTS AS SET FORTH IN THE LEAVE TO
APPEAL FILED PRO SE BY JOHN GUNARTT ON JANUARY 3, 2006
AND THE STATEMENT OF ISSUES ON APPEAL
FILED BY JOHN GUNARTT ON FEBRUARY 9, 2006**

NOW COMES the Movant, Fifth Third Bank, through its attorneys, Kamm & Shapiro, Ltd., and in support of its motion to strike the allegations/ facts as set forth in the Leave to Appeal filed by the Pro Se Appellant, John Gunartt, on January 3, 2006 and the issues alleged in the Statement of Issues on Appeal filed on February 9, 2006 by the Pro Se Appellant, John Gunartt, states as follows:

1. None of the allegations/facts set forth in the Leave to Appeal filed on January 3, 2006 by the Pro Se Appellant, John Gunartt, or the issues alleged in the Statement of Issues on Appeal filed on February 9, 2006 by the Pro Se Appellant, John Gunartt, are or can be part of the record from the District Court as the allegations/facts and issues were never presented or adjudicated by the Bankruptcy Court. If they had been presented to the Bankruptcy Court, the allegations/facts and issues would have been denied as those allegations/facts and issues are not true in substance or in fact and they are not relevant to this appeal.

2. The Pro Se Leave to Appeal filed by John Gunartt is from "The order of the bankruptcy judge denying the motion of John Gunartt to vacate the order converting John Gunartt's

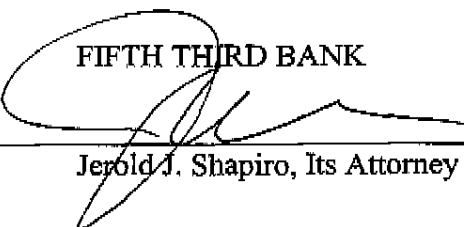
Chapter 11 case to a case under Chapter 7 or in the alternative to dismiss the debtor's bankruptcy proceedings. The order was entered on November 16, 2005."

3. A Minute Order was entered by the Bankruptcy Court on December 22, 2005 denying the motion of the Bankrupt, John Gunartt, to reconvert to a Chapter 11 or to dismiss for the reasons stated on the record.

4. The basis for the Bankruptcy Court's denial of the motion to reconvert to a Chapter 11 or to dismiss was based on the finding of Court that the debtor's plan was not feasible, illusory and that creditors could not be adequately protected.

WHEREFORE, Movant, Fifth Third Bank, is requesting this Court to strike the allegations/facts of the Leave to Appeal filed January 3, 2006 and the issues in the Statement of Issues on Appeal.

FIFTH THIRD BANK

BY:  _____
Jerold J. Shapiro, Its Attorney

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